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No. 88-2130

IN THE

Supreme Court of the United States

OCTOBER TERM, 1989

OSCAR O. D'ANGELO,
Petitioner,
v.
ILLINOIS ATTORNEY REGISTRATION AND DISCIPLINARY COMMISSION,
Respondent.

On Petition for Writ of Certiorari to the Supreme Court of Illinois

PETITIONER'S REPLY BRIEF

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PETITIONER'S REPLY BRIEF

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1. Respondent Illinois Attorney Registration and Disciplinary Commission ("ARDC") incorrectly argues in its Brief in Opposition ("Opp.") that petitioner failed to timely raise his constitutional claims. But not even the ARDC disputes that federal questions *are* preserved if raised in a petition to rehear a state supreme court decision when that decision unexpectedly implicates federal constitutional claims. *Brinkerhoff-Faris Trust & Savings Co.* v. *Hill*, 281 U.S. 673, 677-678 (1930). *See also PruneYard Shopping Center* v. *Robins*, 447 U.S. 74, 85-86 n.9 (1980). Contrary to the ARDC's analysis, that is precisely what happened below.

Petitioner had no warning that the Illinois Supreme Court would declare his conduct with non-judicial public

officials sanctionable. Prior to the decision below, *no* disciplinary rule prohibited or even addressed such conduct. The ARDC tries to avoid this self-evident fact by blatantly misinterpreting the meaning of "official" in Rule 7-110(a) to include non-judicial public employees.[1] By its express terms, Rule 7-110(a) *only* covers officials "*of a tribunal.*" Non-judicial public employees are simply not within the abmit of the rule. Indeed, as the Illinois State Bar Association's *amicus* brief states, prior to the decision below "the Illinois Code did not single out or even hint [that giving something of value to a non-judicial public employee] was improper." [2]

Petitioner likewise had no warning that the court below would adjudicate his conduct with judges under a wholesale amendment to Rule 7-110(a). The ARDC's argument that petitioner should have amended his "pleadings" below to, in effect, warn the court that it would be unconstitutional to apply the amended rule to his past conduct is absurd. When the court below amended Rule 7-110(a) in *In re Corboy*, 124 Ill. 2d 29, 528 N.E.2d 694 (1988), it expressly declined to apply the amendment retroactively. Petitioner had no reason to believe that the court would ignore this precedent and judge his past conduct under the new standard. Petitioner's constitutional claims first arose when the court below did so, and thus his federal claims were timely raised in his petition for rehearing.

2. Aside from its flawed analysis of the jurisdictional issue, the ARDC's Brief in Opposition is notable only for its omissions. The ARDC does not dispute petitioner's

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[1] Opp. at 13-14.

[2] Brief of *Amicus Curiae* Illinois State Bar Association, at 3. The ISBA thus concludes that "[d]ue process and equal protection of the law violations arise *for the first time* in the court's opinion imposing the ultimate sanction of disbarment." *Id.* (emphasis added). Upon a fair reading of the Illinois Code, this conclusion is inescapable.

statement of the facts of this case. Moreover, the ARDC does not even address the validity of most of petitioner's constitutional claims.

Thus while the ARDC admits that the court below did sanction petitioner for a violation of Canon 9 of the Illinois Code of Professional Conduct,[3] it does not even discuss petitioner's claim that this was patently unforeseeable and thus unconstitutional, since Canon 9 expresses policy considerations only and is not a standard of discipline.

Furthermore, the ARDC does not address petitioner's claim that the court below violated the Ex Post Facto and Due Process Clauses of the United States Constitution when it punished conduct which was not prohibited by (or even the subject of) any disciplinary rule.[4] This aspect of the decision below, standing alone, is sufficient to warrant this Court's review. Even though a prohibition on gifts to non-judicial public employees was completely unforeseeable at the time of the conduct in question, the court below unquestionably sanctioned petitioner in reliance on this heretofore unknown prohibition. The constitutional implications of such jurisprudence are profound, not only to petitioner, but to all Illinois attorneys.

Finally, the ARDC sidesteps petitioner's claim that the retroactive application of the new Rule 7-110(a) to his past conduct with judges violated ex post facto and due process principles. The ARDC admits that the court below judged petitioner under the new rule,[5] but argues

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[3] Opp. at 17-18.

[4] By implying that the term "official" in Rule 7-110(a) includes non-judicial public employees, one might conclude that the ARDC's substantive arguments are intended to apply to non-judicial employees as well as to judges. If so, this back-door maneuver is, at the very least, delusive. As noted above, Rule 7-110(a) in no way addresses conduct with public employees *unless* they are either judges or officials or employees *of a tribunal.*

[5] Opp. at 16.

that this was of no consequence because the conduct was clearly prohibited under the old rule. This argument ignores the fact that, prior to *Corboy*, Rule 7-110(a) had been interpreted by the bar only to prohibit gifts "motivated by an intent to influence."[6] It also ignores the record below, which contains no evidence that petitioner ever intended to influence any judicial decision. Petitioner was entitled to be judged under the ethical standards in effect at the time of his conduct. To do otherwise was to violate petitioner's constitutional rights.

3. Petitioner has been disbarred for conduct that was not prohibited when it took place. The ARDC's Brief does not cast doubt on this plain fact. Ex post facto and due process principles were violated, with far reaching implications for all Illinois attorneys and attorneys around the Nation. The important and recurring constitutional issues raised by the decision below may not be addressed elsewhere, and therefore this Court should grant the writ.

Respectfully submitted,

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[6] *In re Corboy*, 124 Ill.2d at 38, 45, 528 N.E.2d at 698, 701.